

**STATE OF MINNESOTA
IN COURT OF APPEALS**

In re: Thomas Shimota,
Petitioner

**SECOND DECLARATION OF PETITIONER
THOMAS SHIMOTA IN SUPPORT OF
WRIT OF PROHIBITION AND EMERGENCY STAY
OF SALE OF BUSINESS AND PROPERTY**

vs.

DISTRICT COURT CASE NO. : 70-cv-18-6768
APPELLATE COURT CASE NO. :

Elizabeth Shimota

Respondents

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I, Petitioner, Thomas Shimota, hereby state and allege as follows:

1. I am submitting this Second Declaration in Support of a Petition for Writ, Rule 120, and an Emergency stay of the Order of October 6, 2022 and Order of December 9, 2022 as to the dissolution of my business, B&T Investments, LLC and the sale of my real property, located at 1401 Main Street East, New Prague, MN.
2. I provided court documents Exhibits 1-10 in my First Declaration of Petitioner. I am picking up where I left off.
3. I appealed the Orders to the Minnesota Court of Appeals, File no. A23-0051. For the court's benefit, my Notice of Appeal is attached here as **Exhibit 11**.
4. I filed a Motion for Stay of the Sale New Prague Building, B&T Investments, LLC with the Minnesota Court of Appeals, File no. A23-0051, attached here as **Exhibit 12**.
5. The Court of Appeals dismissed my appeal as premature because Plaintiff's attorney had filed a letter to Judge Fallon on December 19, 2022 requesting attorney fees. The Court of Appeals dismissed the appeal as premature because the attorney fees had not been adjudicated, and the dismissed the motion for stay as moot without expressing an opinion as to the merits of the motion, attached here as **Exhibit 13**.
6. Plaintiff or her attorney Cassandra Wolfgram have not communicated with me about the sale of the New Prague building. They have been doing everything about the sale behind

my back trying to sell the building as quickly before the Court's are illuminated that the dissolution of the business and sale of the building and B&T Investments, LLC are subject to being vacated as void to pay their personal judgments against me.

7. I received an unsigned copy of a Commercial Purchase Agreement, the one was sent to Judge Fallon's clerk, with a closing of January 31, 2023.
The purchase agreement could not be signed in any event as it would require a false representation in item 146-150 by the seller that

"Representations and Warranties of Seller: The following representations made are to the best of Seller's knowledge: there is no action, litigation, investigation, condemnation, or other proceeding of any kind pending or threatened against the Seller or any portion of the Property . In the event Seller becomes aware of any such proceeding prior to closing, Seller will promptly notify Buyer of such proceeding." See **Exhibit 14**

8. This action, Thomas Shimota v. Elizabeth Shimota inherently involved the New Prague building and B&T Investments, LLC, as Plaintiff Elizabeth Shimota was legal representative of B&T Investments LLC by Judge Fallon.
9. My attorney, Craig Foss received the copy of the title work from Old Republic which had the judgement against B&T Automotive, LLC, for among other defects caused by this litigation, including that they required a signed purchase agreement, and my signature. A copy of the title work is attached here as **Exhibit 15**.
10. I wrote to, emailed and called the Scott County Abstract and Title, Sue Malz, Mark Bilbury, Barbara Gilmore, Caroline Monroe, of Old Republic to alert them to my interest and concerns. One example is **Exhibit 16**
11. I wrote to, emailed and called the realtors, Pat Sullivan, Trevor Houn and Eric Malburg and the Minnesota Realtor to alert them to my interest in the property and concerns. One example is **Exhibit 17**
12. I was in communication with the buyer, Ron Hertaus, who was buying the adjacent property from Dave Gerold. I was in communication with Dave Gerold.
13. My concerns about any sale were alleviated regarding the sale of the New Prague building pending my appeal because everyone I talked to said that Elizabeth Shimota and her attorneys could not sell it from under me because of the title problems, and the litigation, this litigation relating to the property, and the loan needing to be insured by Old Republic.
14. I was planning on this writ because Elizabeth Shimota and her attorney were not proceeding with the adjudication of the attorney fees, and my appeal was perpetually premature.

15. Then out of the blue, on March 29, 2023, Cassandra Wolfgram emails Judge Fallon's clerk for an emergency hearing "for an injunction against me. She claimed that "Old Republic needs an order stating" (1) Thomas has no interest in the real estate;" **Exhibit 18**
16. Cassandra Wolfgram filed an emergency ex parte Notice of Motion for Temporary Injunction regarding the real property, to enjoin me from communicating with individuals and entities involved in the contract for the sale of my property, attached as **Exhibit 19**
17. Judge Fallon denied the emergency ex parte relief but ordered a hearing on a temporary injunction for April 17, 2023 **Exhibit 20**
18. Plaintiff's attorney files an Amended Notice of Motion and Motion for Injunction attached here as **Exhibit 21**
19. I filed and scheduled a countermotion to vacate the orders of October 6 and December 9, 2022 as fraud on the court, and to restore my property rights, and other relief, a copy of my Notice of Motion and Motion, fraud on the court, is attached here as **Exhibit 22**
20. Cassandra Wolfgram failed to respond to my motion representing I was "relitigating," which was untrue.
21. Judge Fallon held a hearing on Monday, May 22, 2023 where I argued my motion. I spoke first, then Cassandra Wolfgram spoke, arguing I was a frivolous litigant, which was untrue.
22. At the close of the hearing, Cassandra Wolfgram announced said that she was "withdrawing" her motion for injunction against me, which motion had been pending against me from March 29 to May 22, 2023, for two months, because "the property sold" and she no longer needed an injunction.
23. I was stunned. I had been in communication with the buyer, Ron Hertaus, as late as May 16, and he said that there was nothing going on with the real estate, he had heard nothing. Dave Gerold said he had lunch with the realtor, Pat Sullivan on Wednesday May 17 and that the realtor said the title was a mess and that no one would insure it.
24. I was forced to file bankruptcy to stay the sale of my property, and notified everyone involved in the sale. I also checked the property records and there was no sale. I contacted the closing company, Scott County Abstract and Title and the Old Republic. They both wrote back. Barbara Gilmore responded the same day and stated that Old Republic "has no involvement in this transaction" and "Old Republic does not insure real property and declined to insure this real property." **Exhibit 23**
25. Sue Malz at Scott County emailed me on May 23, 2023 saying "We are not involved in this transaction anymore, our file canceled last week." **Exhibit 24**

26. I am greatly concerned about the secrecy, deceit, and the false representations that the real property is not involved in litigation. I will be irreparably harmed by the sale of the culmination of my life's work as set forth in my prior motion to Stay of the Sale of the Building, which I incorporate herein by reference. See **Exhibit 12**
27. I am not relying on Judge Fallon to vacate the orders, even though the motion is before him, however I am hopeful that he was illuminated as to the fact that the dissolution of my business was never litigated at trial and not part of it.
28. Judge Fallon trusted Cassandra Wolfgram and signed her proposed orders which contained serious misrepresentations as to what was before him at the trial on June 21-23, 2023, including the causes of action and the parties. There was no dissolution of B&T Investments, LLC before him, there was no sale of the building before him, and the businesses were not parties. My work life has been turned upside down, what I worked for all of these years, in business with my brother Bob Shimota since 1988, owning the New Prague building since 1994.
29. Thank you and I hope you can help me with all of this by staying the sale and vacating the judgments with the writ.

I declare under penalty of perjury that everything I have stated in this document is true and correct. Minn. Stat. 358.116.

Dated: May 24, 2023



Thomas Shimota